

Original
Covenants and
Restrictions

OCT. 29 1999

FEE:\$7.50 RETURN TO: CHARLES W. PEOPLES, JR.
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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND AGREEMENTS FOR GREENBRIER
PINES SUBDIVISION,
LEWISBURG, GREENBRIER COUNTY, WEST VIRGINIA**

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THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND AGREEMENTS FOR GREENBRIER PINES SUBDIVISION, made this 4th day of October, 1993, by GREENBRIER PINES CORPORATION, a West Virginia corporation, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner and developer of a certain tract of real estate consisting of 50.316 acres, more or less, situate in the City of Lewisburg, Greenbrier County, West Virginia, located on the northeast side of U.S. Route 60 and on the southwest side of West Virginia State Local Service Route 219/5, as more particularly described in a deed conveying the subject property to Declarant dated the 6th day of August 1993, and recorded in the Office of the Clerk of the County Commission of Greenbrier County, West Virginia, in Deed Book 420 at Page 277; and

WHEREAS, it is the intent and desire of Declarant to develop the described property and to sell lots for the construction of single family residences and to impose certain mutual and beneficial restrictions, covenants, conditions, and agreements upon the property for the purpose of enhancing and protecting the value, attractiveness and desirability of the lots constituting the development under a general plan or scheme of improvement for the benefit of all future owners thereof;

NOW, THEREFORE, Declarant, for itself, its successors and assigns, does hereby declare that all of the property owned by it as described above and each part of such property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following easements, covenants, restrictions, conditions and provisions, which constitute covenants running with the land and which shall be binding upon all parties having or acquiring any right, title or interest in and to the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner of such property.

ARTICLE ONE

DEFINITIONS

Section 1. "Association" shall mean and refer to The Greenbrier Pines Homeowners Association, Ltd. (the Association), its successors and assigns.

Section 2. "Common Area" shall mean all real property to be owned by the Association for the common use and enjoyment of the owners.

Section 3. "Declarant" shall mean Greenbrier Pines

Corporation, its successors and assigns provided such successors or assigns acquire more than one undeveloped lot from Declarant for the purpose of development.

Section 4. "Lot" shall mean any plot of land shown on the recorded plat or map of the Subdivision with the exception of the common areas and portions marked "Reserved".

Section 5. "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weedfree environment for optimum plant growth.

Section 6. "Member" shall mean every person or entity who holds membership in the Association.

Section 7. "Mortgage" shall mean a conventional mortgage or deed of trust.

Section 8. "Mortgagee" shall mean a holder of a conventional mortgage or the beneficial owner of a deed of trust.

Section 9. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any lot that is part of the property, and shall include contract sellers, but shall not include those holding title merely as security for performance of an obligation.

Section 10. "Subdivision" shall mean the subdivided real property described above and as shown and designated on a plat or plats thereof recorded in the Office of the Clerk of the County Commission of Greenbrier County, West Virginia and such additions to such property as may be brought within the jurisdiction of the Association as provided in this Declaration.

ARTICLE TWO

MEMBERSHIP IN ASSOCIATION-VOTING RIGHTS

Section 1. Every owner of a lot shall be required to be a member of the Association and abide by the rules and regulations thereof. Membership shall be appurtenant to and may not be separated from ownership of a lot.

Section 2. The Association shall have two (2) classes of voting membership as follows:

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Class "A". Class "A" members shall be all owners with the exception of Declarant, and shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in a given lot, all such persons shall be members and the vote for such lot shall be exercised as they may determine between or among themselves. In no event, however, shall more than one vote be cast with respect to each lot owned by Class "A" members.

Class "B". The Class "B" member shall be Declarant, which shall be entitled to exercise three (3) votes for each lot in which it holds an interest. The Class "B" membership shall cease and be converted into Class "A" membership when the total votes outstanding in the Class "A" membership equal the total votes outstanding in the Class "B" membership, or on January 1, 2004, whichever first occurs.

Section 3. The purpose of the Association shall be to maintain, improve, regulate and control the use of certain areas and improvements for common use, and for such other purposes as the Association may reasonably direct. The Association shall have the power to levy assessments in order to meet current and projected future expenses of maintenance, improvements and regulation which are for the general benefit of all members. The annual assessment in the Association, excluding any special assessment, shall not exceed three hundred dollars (\$300.00), for each owner, unless such limit is revised as hereinafter provided. The Association shall also have the power to assess or bill owners individually for the cost of services which are for the specific use and benefit of such owner and such owner has requested such service.

ARTICLE THREE

ASSESSMENTS

Section 1. Declarant covenants for each lot within the subdivision, and each owner of a lot is deemed to covenant by acceptance of such owner's deed for such lot, whether or not it shall be so expressed in the deed, to pay to the Association annual assessments or charges and any special assessments, together with such interest thereon and costs of collection thereof as herein provided. The annual assessment or charge and any special assessment, together with interest, costs of collection and reasonable attorney fees, shall be a charge on the land and a continuing lien on each lot against which such assessment or charge is made. Each such assessment or charge, together with interest, costs of collection and reasonable attorney fees, shall be the personal obligation of the person or persons who owned the lot at the time the assessment or charge fell due, but such personal obligation shall not pass to the successors in title of such person or persons unless expressly assumed by such successor in title.

Section 2. The Assessments or charges levied by the

Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the subdivision and for the esthetic enhancement, improvement and maintenance of the common areas and the homes situate within the Subdivision.

Section 3. The Association may change the maximum amount of the annual assessment fixed by Article Two, Section Three, provided that any such change shall require the consent of two-thirds (2/3) of the vote of each class of members who are voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all members at least thirty (30) days in advance of such meeting and which notice shall set forth specifically the purpose of such meeting. The attendance of sixty percent (60%) of all the votes of each class of membership shall constitute a quorum for purposes of such vote.

Section 4. The board of directors of the Association may fix the annual assessment in any year in an amount not to exceed the maximum herein provided. The board of directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of the due date for such assessment and shall fix the date such amount becomes due. Notice of the annual assessment shall be sent to each member/owner subject to such assessment.

Section 5. In addition to the annual assessments authorized herein, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair, or replacement of an improvement on the common areas, including fixtures and personal property related to the common areas. Any such special assessment shall require the consent of two-thirds (2/3) of the vote of each class of members who are voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all members at least thirty (30) days in advance of such meeting and which notice shall set forth specifically the purpose of such meeting. The attendance of sixty percent (60%) of all the votes of each class of membership shall constitute a quorum for purposes of such vote.

Section 6. All Assessments must be fixed at a uniform rate for all lots.

Section 7. The annual assessment provided for in this Declaration shall commence and become due and payable as to all lots on the first day of the month following the conveyance of the common areas by Declarant to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the applicable calendar year. Any special assessments made thereafter shall become due and payable on the first day of

the month following such assessment. Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall bear interest from the due date at the rate of eight percent (8%) per annum and shall constitute a lien against the lot upon which it is assessed. The Association may bring an action at law against the owner or owners personally obligated to pay such assessment, or may foreclose the lien against the property. In the event an action at law is instituted for the collection of any such delinquent amount, the Association shall be entitled to recover the costs incurred in the collection of said amounts, including reasonable attorney fees. No owner or owners may waive or otherwise escape liability for the assessments provided for in this declaration by nonuse of the common areas or abandonment of the lot against which any such assessment is made.

Section 8. The lien for any assessment provided for in this declaration shall be subordinate to the lien of any first mortgage. The lien for any such assessment provided for shall be superior to any homestead exemption now or at any time hereafter provided by the laws of the State of West Virginia. A sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu of such foreclosure, shall extinguish the assessment lien as to payments that become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien of such assessments.

ARTICLE FOUR

ARCHITECTURAL CONTROLS

Section 1. There shall be an architectural review board which shall be composed of no less than three (3) nor more than seven (7) members. Declarant reserves the right to appoint all of the original members of the committee and all replacements thereafter until such time as Declarant assigns such right to a subsequent developer of the subdivision or to the Association.

Section 2. No structure, whether residence, accessory building, tennis court, swimming pool, antenna, flag pole, fence, wall, exterior lighting, or other improvement, shall be constructed or maintained upon any lot and no alteration or repainting to the exterior of a structure shall be made and no landscaping performed unless complete plans, specifications, and lot plans therefore, showing the exterior design, height, building material and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, walls and windbreaks, and the grading plan, shall have been submitted to and approved in writing by the architectural review board, and a copy of such plans, specifications, and lot plans, as finally approved, deposited with

the architectural review board. When furnished, only those house numbers and mail boxes which are approved by the Declarant shall be used and maintained on the owner's lot.

Section 3. The architectural review board shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on lands within the confines of the subdivision conform to and are in harmony with existing and surrounding structures and improvements.

Section 4. The architectural review board shall approve or disapprove all plans and written requests submitted in accordance with the procedure set forth in Section 2 hereof, within forty five (45) days after receipt thereof. In the event the committee fails to take action on approval or disapproval within forty five (45) days after receipt of any such plan or written request, approval will be considered to have been granted unless prior to the expiration of such time the board has made request for additional plans or further explanation of the plan or request made. Approval of plans or requests by the architectural review board shall not take the place of any other permit or license needed or otherwise required by law or ordinance.

Section 5. The architectural review board shall maintain written records of all applications submitted in accordance with the requirements hereof and all action taken thereon.

Section 6. The architectural review board shall not be liable for damages to any person or entity submitting plans or requests for approval or to any owner within the subdivision by reason of any action, failure to act, approval or disapproval of any plan or request submitted in accordance with the requirements hereof.

ARTICLE FIVE

EXTERIOR MAINTENANCE

Section 1. The Structures and improvements erected upon any lot and the grounds thereof shall be maintained in a neat and attractive manner at all times. Upon the owner's failure to so maintain, the architectural review board may, within its discretion, after giving the owner thirty (30) days written notice sent to his/her last known address, take any and all reasonable action in keeping with the requirements hereof, to include cutting of grass and vegetation, and removal of dead trees, shrubs and plants. Upon the owner's failure to maintain the exterior of any structure or any improvement in good repair and appearance, the architectural review board may, within its discretion, after giving the owner six (6) months written notice sent to his/her last known address, take any and all reasonable action in keeping with the

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requirements hereof to make repairs and improve the appearance of such structure or improvement in a reasonable and workmanlike manner.

Section 2. The cost of any such maintenance referred to in Section 1 of this Article shall be assessed against the lot upon which such maintenance is done and shall be added to and become a part of the annual assessment or charge to which such lot is subject pursuant to Article Three hereof.

Section 3. The architectural review board shall have the right, after reasonable notice to the owner, to come on to any lot for purposes of inspection of the premises and for the purpose of performing any maintenance authorized by Section 1 of this Article.

ARTICLE SIX

COMMON SCHEME RESTRICTIONS

Section 1. The following common scheme restrictions are imposed upon each lot as well as all common areas of the Subdivision and upon all owners of a lot:

A. No garbage, refuse, rubbish, or cuttings shall be deposited upon any street or road.

B. No building materials of any kind shall be placed or stored upon any lot except in connection with construction approved as hereinbefore provided. Upon the placement of building materials on a lot in connection with approved construction, construction shall be promptly commenced and diligently pursued to its completion. Construction of the residence upon any lot shall be completed within one (1) year of its commencement.

C. Exterior lighting installed or maintained upon any structure or lot shall be either indirect or of such controlled focus and intensity so as not to disturb residents of adjacent lots.

D. No animals or birds except domestic household pets shall be kept on any parcel.

E. One story residential structures shall contain no less than eighteen hundred (1800) square feet of heated floor space, exclusive of garages, porches, patios, breezeways and decks. Two story residential structures shall contain no less than twenty-two hundred (2200) square feet of heated floor space exclusive of the aforesaid additions. No structure shall exceed thirty five (35) feet in height from ground level to the roof peak.

F. Residential structures erected on any lot shall be used for one family residential purposes only. Commercial use is

prohibited. No lot or parcel may be subdivided in any manner.

G. No sign may be erected or maintained on the lot or structure situate thereon except for the purpose of identification of the owner, house number, or advertising the sale of the lot or home thereon. Approval of the architectural review board shall be first obtained prior to the erection or placement of any such sign.

H. All plans for residential structures and additions or improvements shall be submitted to and approved by the architectural review board prior to commencement of construction. Construction shall be in substantial compliance with such plans as are approved by the board without any change to the exterior walls or roof thereof.

I. No lot or any part thereof shall be used for trailers, mobile homes, tents or temporary shelters of any kind or description, nor shall any structure be occupied as a temporary shelter until all the exterior walls and roof thereof have been completed.

J. Any lot or parcel not served by public sewer service shall have adequate septic systems and drainage fields located and constructed in such manner so as to meet all requirements of the State of West Virginia and local public health authorities.

K. No open loop water source heat pumps, injection wells for heat pumps or infiltration galleries for heat pumps shall be permitted.

L. No noxious or offensive activity or operation of any kind or character shall be carried on or allowed on any lot or parcel.

M. No camping or recreational vehicle, large truck (other than pickup truck), busses, boats, trailers, and other large vehicles or vehicles not in regular use shall be parked on any lot or parcel or the street adjoining thereto at any time.

N. All Rubbish and garbage shall be kept in sanitary containers with lids or other closure at all times, so as to be secure from opening by dogs or wildlife and shall be kept out of public view except on day of collection. All incinerators and other equipment for storage and disposal of waste materials shall be kept in sanitary condition and out of public view.

O. Each lot shall contain a screened or fenced area in which fuel tanks or similiar storage receptacles, electric and gas meters, air conditioning or heat pump equipment, clotheslines and other unsightly objects shall be placed or stored in order to conceal the same from view of streets, roads and adjacent properties. Plans for such screened or fenced areas shall be

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approved by the architectural review board prior to construction thereof.

P. No television or radio antenna, satellite dish receiver or similiar device of any kind shall be attached to or installed on the exterior portion or roof of any structure situate on any lot. A satellite dish receiver with a diameter not exceeding forty two (42) inches or antenna for the reception of radio or television signals may be permitted in the back yard only of lot. The location and design of such devices must be approved by the architectural review board prior to the placement thereof.

Q. No property owner shall obstruct, alter or interfere with the flow or natural course of the waters of any creek, stream, lake or pond within the Subdivision without first obtaining the written consent of the Declarant or its successors.

R. One detached storage building shall be permitted upon each lot. The exterior walls of any such storage building shall be constructed of the same materials as the residence structure and shall match and compliment the color scheme of the residence structure. No such storage building shall be more than one (1) story in height. The location and design of any such storage building must be approved in advance of its erection or construction by the architectural review board.

ARTICLE SEVEN

GENERAL PROVISIONS

Section 1. The covenants, restrictions, conditions, easements and agreements of this Declaration shall bind all persons, firms and entities owning lots within the Subdivision and all persons claiming under them, their successors and assigns, and shall run with the land and shall inure to the benefit of and be enforceable by the Association or any member thereof forever or until such time any proposed change of these covenants shall have been approved in writing by two thirds (2/3) majority of the membership of the Association.

Section 2. Declarant, the Association, or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association, or by any owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so at a later time.

Section 3. Declarant reserves the right to assign in whole or in part to a subsequent developer of the Subdivision or to the Association, its rights reserved in this instrument. Following

the assignment of such rights, the assignee thereof shall assume all of Declarants' obligations which are incident hereto, if any, and Declarant shall have no further obligation or liability with respect thereto. The assignment of such rights by Declarant shall be by written instrument duly recorded in the Office of the Clerk of the County Commission of Greenbrier County, West Virginia.

Section 4. Declarant reserves unto itself, its successors and assigns, all utility easements and areas shown on any plat or plats recorded by Declarant in connection with the development of the Subdivision and further reserves unto itself, its successors and assigns, during the time Declarant has title to the common areas affected, the right to relocate, change or modify from time to time all utility easements. Reference to streets, utility easements and common areas in any recorded plat or plats is for the purpose of description only and shall not constitute a dedication to or for public use in general.

Section 5. Any violation of governmental building codes, health regulations, zoning restrictions and similar regulations applicable to the lots in the Subdivision now or in the future, shall also be considered a violation of these restrictions and covenants. In the event of conflict between the provision of any governmental code, regulation or restriction and any provision of these restrictions and covenants, the more restrictive provision shall apply.

Section 6. Invalidation of any one of the covenants or restrictions contained in this Declaration by judgment or court order or otherwise shall in no manner affect any other provisions hereof, which shall remain in full force and effect.

Section 7. No breach of any of the conditions contained in this Declaration or reentry by reason of such breach shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for the value as to the Subdivision or any lot in the Subdivision; provided, however, that such conditions shall be binding upon any owner whose title is acquired by foreclosure, trustee's sale or otherwise.

Section 8. This Declaration and all of its terms shall be governed and construed according to the laws of the State of West Virginia.

IN WITNESS WHEREOF, Declarant, Greenbrier Pines Corporation, by its officers duly authorized, does hereby set its hand and seal this 4th day of October, 1993.

GREENBRIER PINES CORPORATION,
a West Virginia corporation

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(Corporate Seal)

By:

Robert E. Vass, Jr.

Its:

President

ATTEST:

Charles R. Persinger
Secretary

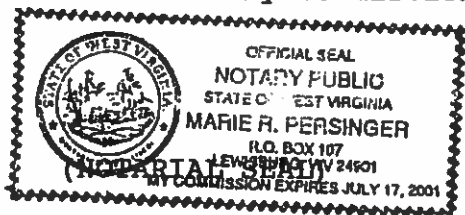
STATE OF WEST VIRGINIA,

COUNTY OF Greenbrier, TO-WIT:

I, Marie R. Persinger, a Notary Public in and for the County and State aforesaid, do hereby certify that Robert E. Vass, Jr., whose name is signed to the foregoing writing bearing date the 4th day of October, 1993, as President of Greenbrier Pines Corporation, has this day acknowledged the same before me to be the act and deed of said corporation.

Given under my hand this 4th day of October, 1993.

My commission expires: July 17, 2001.



Marie R. Persinger
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Charles W. Peoples, Jr.
Attorney at Law
Mezzanine Suite 203
The Frederick Building
P. O. Box 2854
Huntington, WV 25728

WEST VIRGINIA, Greenbrier County, S. S:

In the Clerk's Office of Greenbrier County Court 26th day of Oct. 1993

This DEED was this day presented in the office aforesaid and thereupon, together with the Certificate thereto annexed, admitted to record.

Teste Edmond J. Spence ClerkBy Rebecca D. Lightner Deputy